

California Commission on Safety and Health and Workers' Compensation

MINUTES OF MEETING

Thursday, June 29, 2000

Los Angeles, California

In Attendance

Chair Tom Rankin
Commissioners Jill A. Dulich, Leonard C. McLeod, Kristen Schwenkmeyer,
Robert B. Steinberg, Darrel "Shorty" Thacker, John C. Wilson
Executive Officer Christine Baker

Absent

Commissioner Gerald O'Hara

Call to Order/Adoption of Minutes

Chairperson Tom Rankin called the meeting to order at 10 am and asked for a motion on the minutes of the June 29, 2000 CHSWC meeting. Commissioner Wilson moved to approve the draft minutes, Commissioner Schwenkmeyer seconded, and the motion passed unanimously.

**Report on the Division of Workers' Compensation
Request for Proposal (RFP) for the DWC Judicial System Study**

Richard Gannon, Administrative Director, Division of Workers' Compensation

At its December 16, 1999 meeting, the Commission members voted to conduct a study of the DWC judicial function. The purpose of the study is to identify possible statutory and administrative changes to make the system work more efficiently. The project will look at schools and practices in other jurisdictions that have addressed problems such as calendaring, case management and other issues of concern. At the last Commission meeting Mr. Ernie Friesen, a consultant on the study and an expert on case management, reported that there would be a stakeholders meeting held to develop a Request for Proposals (RFP) for the project. Since then, CHSWC and the division have received input from a task force of judges and community members and guidance from Mr. Friesen on the contents of the proposal. CHSWC staff has summarized these comments into a Request for Proposals.

CHSWC Vote

Commissioner Dulich moved to approve the draft Request for Proposals for the DWC Judicial System Study. Commissioner Wilson seconded, and the motion passed unanimously.

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**Update on CHWC Study of Permanent Disability by Rand
Draft of Private Self Insured Study**

Robert T. Reville, Ph.D., Economist, Rand

Bob Reville reported on the latest version of the Private Self-Insured component of the CHSWC Permanent Disability Study by Rand and reported that he is in the last stages of the study's peer review process. He received reports from two peer reviews and has responded to their comments. In addition, six stakeholders were invited to provide comments, which will be appended to the report. The six stakeholders are labor, self-insured employers, applicants' attorneys, California Coalition on Workers' Compensation, insurers and employers.

Mr. Reville commented that the final results of the Economic Study and the Public Wage Earning Losses Study draft results would be available at the next Commission meeting.

CHSWC Vote

Commissioner Thacker moved to approve the Draft Report on Permanent Disability: Private Self-Insured. Commissioner Schwenkmeyer seconded, and the motion passed unanimously.

Report On the California Low Back Pain Claimant Cohort Study

Niklas Krause, MD, PhD, MPH, School of Public Health, UC Berkeley, and
Public Health Institute, Berkeley

Last year, CHSWC asked Dr. Niklas Krause to use previously gathered data from NIOSH (National Institute for Occupational Safety and Health) to look at physician practices, attitudes and factors that help injured workers return to work promptly and safely after suffering a low back injury. Dr. Krause reported that the two-part study focuses on the physicians and on the injured workers that have been interviewed. At this meeting Dr. Krause concentrated on the analysis of the injured workers and their experience of their return to work after low back injury.

Dr. Krause reported that the study investigated the impact of specific physical workload factors on the duration of disability after a low back injury controlling for demographic, injury-related, psychosocial, and other job related characteristics. A 3-year cohort sample of 850 compensated low back injury cases were drawn from a large workers' compensation insurance carrier in California, covering both rural and urban areas. Of the 850 claims, 721 claimants were selected for a follow-up telephone interview between July and December 1997 and 433 responded. The subjects were interviewed at least six months after their last temporary disability payment and up to 3.7 years after the injury.

Dr. Krause reported that heavy physical work and an increase in psychological demands are barriers to return to work during all phases of disability. A high level of job control and work schedule flexibility doubled return to work rates during the subacute phase of disability (the phase that extends beyond the first 30 days of disability). The study also unexpectedly found

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that people in the subacute phase who have had a previous low back injury had a higher chance of returning to work than those who did not. Dr. Krause emphasized that these results could be useful in job redesign and modified work programs. The results on the effects of physical work factors on the duration of disability have been published in the Journal of Occupational and Environmental Medicine in March 2000.

Dr. Krause commented that the next phase of the study would deal with physician factors that influence return to work rates.

Status Report on Loss Control Study

Frank Neuhauser, Survey Research Center, UC Berkeley

Frank Neuhauser presented an update on the work that the Commission is doing in conjunction with the International Association of Industrial Accidents of Boards and Commissions (IAIABC) about efforts to reduce workplace injuries through safety and health. The evaluation is looking at loss control -- regulated loss control efforts for insurers and the OSHA High Hazard Program -- and also looking at how these two programs are applied in the other 50 states.

Mr. Neuhauser reported that after the deregulation of the insurance market as a result of 1993 reforms, investment in loss control has declined about 40%. The project is investigating if an effective methodology can be established for auditing insurers for their performance in targeting hazardous employers.

Mr. Neuhauser identified several alternatives to targeting methodology which could be useful in increasing the utilization of loss control services: 1) Give a premium discount to employers who voluntarily participate in loss control services, 2) Impose premium penalties; and 3) Utilize targeting methods to identify hazardous employers and inform those employers that they could reduce their premiums by obtaining loss control services from insurers.

Mr. Neuhauser obtained OSHA inspection data from the federal government and sorted out California's data from this pool. The loss control analysis and the OSHA High Hazard program evaluation will be finished later this year.

Final Report on CHSWC Study of Workers' Compensation Pharmaceutical Costs

Frank Neuhauser, Survey Research Center, UC Berkeley

At the last Commission meeting, the draft report on the cost of pharmaceuticals in workers' compensation was presented. The draft report was prepared in response to a request from the Commission for a study to identify any potential savings that could result from modifications to California's current approach to regulating pharmaceutical costs under workers' compensation. The Commission circulated the draft report for public comment and, where possible, addressed

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every question and concern expressed. One of the main findings of the report was that the California fee schedule allows significantly higher payments than those allowed by other states' workers' compensation systems reviewed in the report.

Prior to the vote on the report there were several comments from the audience.

Carl Brakensiek

Mr. Carl Brakensiek of CSIMS expressed similar concerns about the study as in his comments of the April 2000 CHSWC meeting. He advised the Commission against acceptance of the report, because he believed pre-1994 injury data was used in the report to which the pharmaceutical fee schedule did not apply. He also said that data included medical management costs which could have given inaccurate results. He was also concerned about the decrease in access with the acceptance of the pharmaceutical fee schedule. Finally, he commented that he was not able to obtain the data from Mr. Neuhauser for review although he believed the data to be public information.

Peter Kellison

Mr. Kellison of the California Pharmaceutical Association supported the comments of Mr. Brakensiek. Mr. Kellison made similar comments as in the April CHSWC meeting. He added that he agreed with one of the study's recommendation of requiring utilization of generics. He noted also that supply limits on a drug could be imposed as a cost containment measure to cut down on wastage. Finally, he noted that his name was left off as an Advisory Committee member and should be added to the list.

Frank Neuhauser

Following the comments, the Commission members asked for responses from Mr. Neuhauser on the issues concerning data issues, management costs and access. First, on the contention that data was not available for public review, Mr. Neuhauser replied that it is inappropriate for the University of California at Berkeley to take proprietary data given under an agreement and expose it to additional uses. However, Mr. Neuhauser stated that he had informed Mr. Kellison and Mr. Brakensiek that they could obtain this data from various sources and he would help them analyze it.

As far as the use of pre-1994 data is concerned, Mr. Neuhauser pointed out that the research team could not find any payers in the system which treat pharmaceuticals costs differently than treatment costs which are paid by date of service and not by date of injury. Also the number of pre-1994 data included in the analyzed transactions are very small and not significant enough to affect the results. On the issue of medical management costs, Mr. Neuhauser stated that these costs were subtracted out from the estimates of total system costs and were never included in the transactions analysis. Finally, on the issue of access Mr. Neuhauser commented that there was no evidence that access would be restricted if the pharmaceutical fee schedule was changed. He also pointed out that in other states with substantially lower fee schedules than that of California, chain pharmacies are not restricting their dispensing of pharmaceuticals.

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Commissioner McLeod was concerned that access could be restricted in rural areas since claimants have to travel long distances for a pharmacy. Mr. Neuhauser replied that although on average the study showed that injured workers did not have to travel long distances at the present time for a pharmacy, if rural areas are experiencing problems of access now, this could be expected in the future.

CHSWC Vote

Commissioner Wilson moved to approve the final draft report on CHSWC Study of Workers' Compensation Pharmaceutical Costs with the amendment that Mr. Kellison's name should be added to the Advisory Committee list. Commissioner Dulich seconded and the motion passed with one "no" vote from Commissioner McLeod.

CHSWC 1999-2000 Annual Report

Christine Baker, CHSWC Executive Officer

Christine Baker reported that over the past several months, staff have been preparing the Commission's mandated annual report containing the results of its many research efforts and its recommendations based upon that research. Ms. Baker submitted the report for approval and thus for publication.

CHSWC Vote

Commissioner Wilson moved for approval of the Commission's 1999-2000 Annual Report. Commissioner McLeod seconded and the motion passed unanimously.

Proposal for a CHSWC Study of Benefit Utilization

Christine Baker, CHSWC Executive Officer

Dr. Steven Rafael, Professor of Public Policy, UC Berkeley

Ms. Baker reported that the aim of the proposed study is to look if there are changes in utilization of workers compensation benefits after an increase in benefits. The proposed study will evaluate whether benefit increases lead to changes in the claim frequency, claim duration and overall claim costs. The total cost of the study is estimated at \$39,000, which will be split evenly between the Commission and WCIRB. Ms. Baker stated that although WCIRB will be providing data and resources for the study the analysis will be done independently by UC Berkeley. Ward Brooks of WCIRB confirmed this. Ms. Baker then introduced Dr. Steven Rafael, professor of Public Policy at UC Berkeley who has assisted in developing the proposal and who would carry out the study.

Dr. Rafael elaborated on the details of the study and stated that he plans to evaluate the 1994, 1995, 1996 increases in maximum benefit levels for temporary disability benefits. In analyzing utilization effect on duration, he would like to compare the number of weeks on average that

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someone receives benefits after the expansion to people with similar earnings that were injured prior to the expansion. He would also like to see if the composition of injuries (traumatic vs. nontraumatic) changes before and after the benefit date. For example, would there be a large proportion of nontraumatic injuries after an increase among workers that are affected relative to what happened among workers that were not affected by the benefit increase. He plans to use statistical techniques to look at incidences and severity of claims and how they respond to increases in benefits. He commented that an advantage of the California study is that since California is a large state, a large sample can be drawn from the data which will provide more precise estimates. Also, since data is available for three benefit increases, the finding in any one year can be compared to another for verification.

Marc Marcus of the California Applicant's Attorney commented that it is important to look at permanent disability increases as well as temporary disability. He also wanted to know how the issue of Labor Code Section 4651.5 would be addressed. Labor Code Section 4651.5 states that an injured worker is entitled to statutory increases in temporary disability even though ones date of injury is earlier if the person is receiving payment 2 or more years after the injury. He was also concerned that data used in the study would be made available for him to review at a later date if needed.

Mr. Neuhauser replied to the above issues, stating that the research team will be trying to look at temporary and permanent disability. Also, he indicated that Labor Code 4651.5 would not be a problem since there is precise date from WCIRB on dates of payment and the research team can look at whether the payment was made 2 years after the date of injury. Therefore, these cases could be isolated. As far as data disclosure, Ward Brooks of WCIRB commented that arrangements for looking at the data could be made.

CHSWC Vote

Commissioner Dulich moved to approve the proposed utilization study. Commissioner Schwenkmeyer seconded and the motion passed unanimously.

Proposed Pilot Project on Workers' Compensation/SDI Databases

Christine Baker, CHSWC Executive Officer

Ms. Baker introduced a proposal for a pilot project on Workers' Compensation/SDI Databases. Ms. Baker commented that an integrated research database of state disability insurance and workers compensation disability data would be developed. EDD would join the Commission in the effort, and other organizations have also been invited to contribute. Ms. Baker said that utilizing data from both SDI and Workers' Compensation has the potential to increase knowledge of both systems, reduce administrative costs, increase understanding of temporary disability duration and return to work and decrease permanent disability experience of workers who suffer serious illnesses and injuries. The initial phase of the study would focus on confidentiality, data analysis and data merging issues. This is a pilot and has no system wide implications at this

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time. The total cost is estimated to be \$32,000. The Commissions' portion would be between \$8,000 and \$16,000 depending if other organizations would contribute to the pilot.

Marc Marcus expressed concern that there could be unintentional blending of the benefit systems. He noted that SDI benefits are paid for by the workers while workers' compensation benefits are not. Mr. Marcus commented that the combination of the two systems could ultimately understate the injured worker's wage loss because of an ancillary benefit he or she receives, such as SDI.

CHSWC Vote

Commissioner Dulich moved to approve the pilot project for the Workers' Compensation/SDI Databases. Commissioner Wilson seconded and the motion passed unanimously.

Public Comments

Dorothy Heckman

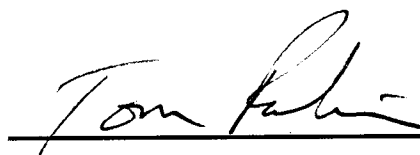
Ms. Heckman, an injured worker, expressed concern about the lack of accountability of the WCAB. She complained about months of delays of the WCAB in addressing her case.

Adjournment

Chairperson Rankin adjourned the meeting at 12:15 pm.

Approved:

Respectfully submitted,



Tom Rankin, Chair

10-4-00

Date



Christine Baker, Executive Officer